

183-106

The CASE of *Nicholas Mosley* and his Sons, Cozins, and next Heirs Males of *Sir Edward Mosley*
Baronet deceased upon his Will, with Reasons against *Edward Mosley's* BILL in
Parliament; Intituled an Act to prevent a Forfeiture of the Estate of
Edward Mosley an Infant.

He said *Sir Edward Mosley* the Thirteenth of *October*, 1665. maketh his Will, (and shortly after dieth) and deviseth his Estate to his Executours *Anne Mosley* and *Edward Mosley* Councillor at Law, for fifteen years, for Payment of his Debts; and that if the Rents and Profits during that term will not pay the same, the said Rents and Profits thereof are to continue to be employed for that purpose, until full Discharge thereof; and then he deviseth the Remainder of the said Estate to the said *Edward Mosley* the Infant in Tail, the Remainder to *Edward* the Father in Taile, upon condition, that *Edward* the Father should within five years after his Decease purchase 7000 *l.* worth of Lands with his own Moneys, (but to be reimbursed with Interest upon Interest out of the Estate) and within six moneths after settle the same upon *Nicholas Mosley* and his Sons; and in case of failure, to Purchase and Settle accordingly, deviseth the Reversion to the said *Anne* and *Edward* in Fee, in Trust, to settle the same upon such of the Sons of *Nicholas*, (as they shall think fit and most worthy) in Taile, the Remainder over to such others of the Name and Bloud, as they shall think fit.

The Estate devised, as aforesaid, is reputed to be of the yearly Value of 2100 *l.* and no more, (the true Value of the Estate in Lease upon old Rents being comprised therein) whereof 1200 *l. per annum* is the Lady *Norths* Joynture, the Reversion of part thereof, and all other Lands devised as aforesaid, are in Mortgage to *Sir John Maynard* for Security of his Debt of 10000 *l.* and Interest; and that Security also charged with 5910 *l.* Debt, (computed in Rent-Charges and Annuities) and unless redeemed by the Thirteenth of *April*, 1673. by Decree in Chancery the Redemption is barred.

There is also 11500 *l.* of other Debts charged upon the said Estate.

The said *Edward* the Father is by Order of Chancery in Possession of all *Sir John Maynard's* Security, and receives the Rents and Profits thereof upon his undertaking to pay the Interest of the said Debt, and the said other Moneys charged upon the said Security until the time of Redemption, but performs not the same; and the said other Debts of 11500 *l.* also run on at Interest: Whereby the Debts and Charges upon the said Estate will be much increased; so that the whole Charge upon the Estate devised to *Edward* the Infant (the said 7000 *l.* for the Purchase aforesaid being also charged thereupon) amounts to 34410 *l.*

By all which *Edward* the Father certainly knows the Estate as to the said Infant his Son, is not worth contesting for, upon the most exact Computation that can be made thereof; yet he endeavours by the present Bill to enlarge the time of purchasing the said 7000 *l.* worth of Land, and to take off the Forfeiture of the Estate to the Sons of *Nicholas* to prevent their Redemption thereof, and thereby the securing their own Estates and Interests devised.

Upon all which these subsequent Particulars deduced out of the Premises, together with an Answer to the Reasons Printed for the Bill, are humbly submitted to Consideration.

- 1st. Whether the enlarging the time, and suspending of the Forfeiture, without great and good Security first given, and provision made for the increase of the Debts and Charges, which will otherwise eat out and swallow up the Estate: And for securing the aforesaid Redemption Estate Mortgaged to *Sir John Maynard*, (especially since *Edward* the Father declares his incapacity to do the same) Or at least for the securing the Purchase of 7000 *l.* worth of Land, and the Rents thereof from the time the same should be settled; So as the said *Nicholas* and his Sons may then be certain either to have *Sir Edward's* own Estate devised as aforesaid, in as good plight and condition, and no farther incumbered than the same now is; Or else may be certain to have the 7000 *l.* worth of Land, and the mean Profits thereof (which is the least the Testator intended) be reasonable to be given by Act of Parliament.
- 2^{ly}. *Edward Mosley* the Father, and *Edward* the Son, in *May* last exhibited their Bill in Chancery, to have the same Relief there against the supposed and intended Forfeiture, that is now sought for by their Bill in Parliament, and the Parties chiefly concerned, whom he made Defendants to that Bill, have put in their respective Answers thereunto, and Mr. *Mosley* may bring his Cause to hearing as soon as he pleaseth.
- 3^{ly}. The said *Edward* the Father in his Printed Case upon this Bill, chargeth the Sons of *Nicholas* to be in Contempt, and that purposely to delay their Answer, that the time may lapse, conceiving the Court of Chancery cannot then relieve; whereas they were never prosecuted with any Contempts for not answering, (*Edward* the Father promising to be at the Charge of taking their Answer) and that he is as well relieveable though they were in Contempt, and in the interim the Forfeiture should accrue, as if they had answered immediately and before the time of Forfeiture lapsed, for that his Relief (if any) must relate to the time of the Bill exhibited: And for the Case in general as to his Relief in Chancery, there are many Presidents where Courts of Equity have relieved in like Cases, and so may in this, if the merits of the Case upon the consideration of all Circumstances will bear it: Howsoever it's further humbly offered to Consideration, whether till the Cause be heard, and a Dismission thereupon, and an Appeal to the Lords in Parliament, and not relieved, he ought to resort to the Legislative Authority.
- 4^{ly}. Lastly, it's desired, that it may be considered that the Estate of *Edward* the Son devised as aforesaid, (notwithstanding the Suits and Troubles that have happened therein) ought not contrary to the Will to be saved to him by Act of Parliament, to the prejudice and damage of the Sons of *Nicholas* (the Heirs Males of the Family) in whom the Testator by his said Will doth so positively vest the Forfeiture, and settle the Estate. Since that *Nicholas* and his Sons have been so far from giving any opposition or Contest against the said Will, or by any Suits or Troubles hindered the performance of the Trust, that the said *Nicholas* hath largely contributed to the Charge of the Probate of the said Will, and given his uttermost Assistance therein to the said *Edward Mosley*, and cannot in the least be charged with any Act or Combination against the Estate and Interest of *Edward* the Son. And therefore it is humbly submitted, Whether that the Estate of *Nicholas* and his Sons ought any ways to be prejudiced by the present Bill; Or that rather the said Bill ought not wholly to be rejected, and the Estate stand and remain as devised according to the Law and Equity of the Kingdom; For that it appears, that the Testator had not any regard to the immediate Devisees quiet Enjoyment: So as thereupon the said *Nicholas* and his Sons should be any ways damnified, but rather the contrary (supposing Controversie might arise) in that he hath appointed this to be done with *Edward* the Fathers own Money, and not out of the Testators Estate; and if He thought not fit to do it, then the Estate should be to the Sons of *Nicholas*, as Devised by the Will.